

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 28th September, 2012

S.R.O.1223(I)/2012.— In exercise of the powers conferred by section 506A of the Companies Ordinance, 1984 (XLVII of 1984) the following draft Regulations are hereby published for the information of all persons likely to be affected thereby and notice is hereby given that objections or suggestions if any, received within a period of fourteen days from the date of its publication in the official Gazette, shall be taken into consideration.

CHAPTER I

PRELIMINARY

1. Short title and Commencement.- (1) These Regulations shall be called the “ Issue of Sukuk Regulations, 2012”.

(2) They shall come into force at once.

(3) They shall apply to all issues of Sukuk by any company or body corporate to the general public or a section of public or to the existing security holders of the issuing company or to Qualified Institutional Buyers or to persons specified in section 120 of the Ordinance and notified there under on or after the date of notification of these Regulations in the official Gazette.

(4) These regulations shall not apply to any company or body corporate specifically setup by the Federal Government or any provincial Government for the purposes of Issue of Sukuk under any other law for the time being enforced.

2. Definitions.- (1) In these Regulations unless there is anything repugnant in the subject or context -

(a) “Appendix” means appendix to these Regulations;

- (b) “Commission” means the Securities and Exchange Commission of Pakistan established under section 3 of Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (c) “Issue” means issuance of the Sukuk certificates through,-
 - (i) initial public offering by an issuer;
 - (ii) an offer for sale to the general public by an Offeror;
 - (iii) an offer to the existing shareholders, debenture holders, sukuk holders or holders of any other security by an issuer;
 - (iv) an offer to institutional investors through private placement; and
 - (v) an offer to persons other than the existing shareholders.
- (d) “Offeror” means a person who directly or indirectly holds ten percent or more securities of a public limited company or body corporate and offer for sale such securities, in full or in part, to the general public;
- (e) “Ordinance” means the Companies Ordinance, 1984 (XLVII of 1984);
- (f) “Qualified Institutional Buyer” means any institution that is authorized by its constitutive document to invest in Sukuk and includes the persons mentioned in section 120 of the Ordinance and notified there under from time to time as persons to whom instrument of redeemable capital can be issued;
- (g) “Regulations” means the Issue of Sukuk Regulations, 2012;
- (h) “Sukuk” means a financial instrument in the nature of redeemable capital evidencing undivided beneficial ownership of the holder in certain specific assets based on Shariah principles and concepts approved by a Shariah Advisor appointed by the issuer for this purposes; and
- (i) “Trustee” means any person registered with the Commission as a Debt Securities Trustee under the Debt securities Trustee Regulations, 2012.

(2) Words and expressions used but not defined in these Regulations shall have the same meanings as are assigned to them in the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997) and the Companies (Asset Backed Securitization) Rules, 1999.

3. Sukuk issued before notification of these Regulations. – (1) The Sukuk issued by any company or body corporate before notification of these Regulations and are outstanding on the date of such notification shall be reported by the issuer to the Commission within thirty days of the notification of these Regulations and such report must be accompanied with the Term Sheet of such Issue on the format given in Appendix-I.

CHAPTER II

ISSUE OF SUKUK

4. Eligibility for Issue of Sukuk.- (1) Any company or body corporate may issue Sukuk under section 120 of the Ordinance subject to the terms and conditions mentioned therein and in these Regulations.

(2) The company or body corporate shall, before the Issue of Sukuk, obtain all necessary approvals from the relevant regulatory authorities, where applicable.

5. Conditions for Issue of Sukuk.- Any company or body corporate that intends to Issue Sukuk shall fulfill the following conditions namely:-

- (a) it has no over-due loan;
- (b) the issuer's as well as the instrument rating is not lower than triple B minus (BBB-) assigned by a credit rating company registered with the Commission under the Credit Rating Companies Rules, 1995;
- (c) it has appointed Trustee through a trust deed for safeguarding interest of the Sukuk holders;
- (d) it has arranged appropriate security, where required, in the form acceptable to the Trustee;
- (e) it has obtained consent of a depository company to declare the Sukuk as eligible security for the purposes of depository system; and
- (f) any other condition as may be specified by the Commission.

6. Shariah Advisor.- (1) Every company or body corporate shall, before the Issue of Sukuk, appoint a Shariah advisor who shall ascertain that the concept on the basis of which Sukuk is structured and the business in which proceeds of the Sukuk Issue are to be utilized are not against the principles of Shariah.

(2) The person appointed as a Shariah advisor under sub-regulation (1) shall be the person who is:

- (a) appointed as a Shariah advisor by any Islamic Banking Institution;
- (b) appointed as a Shariah advisor by a conventional bank having Islamic banking division or branches ; or
- (c) a person recognized by the Commission as a Shariah advisor.

7. Underwriting.- (1) Save as provided in regulation (2), the Issue of Sukuk shall be underwritten.

(2) The underwriting may not be required where,-

- (a) utilization of the proceeds of the Issue is solely for meeting the working capital requirement; and
- (b) the issuer has in place alternative funding arrangements for meeting the short fall if occurred due to under subscription of the Issue.

(3) Where the Issue is not underwritten, the minimum subscription on which the issuer or the Offeror, as the case may be, proceed further shall be disclosed in the prospectus, the information memorandum, or the contract, as the case may be.

(4) Unless otherwise allowed in writing by the Commission, where any Issue is under-subscribed and cannot meet the minimum level of subscription disclosed as required under sub-regulation (3), the Issue must be aborted and the subscription received must be refunded to all the subscribers within a period not more than ten days from the last date for subscription.

8. Appointment of Trustee.- (1) For every Issue of Sukuk the issuers shall appoint a Trustee.

(2) The appointment of Trustee shall be carried out through execution of a trust deed which shall contain such clauses as required under the Trusts Act, 1882 and the Debt Securities Trustee Regulations, 2012.

CHAPTER III

DISCLOSURE REQUIREMENTS

9. Disclosure requirements for issuance of Sukuk. - (1) Where Sukuk are issued to the general public, the issuer shall prepare a prospectus containing all the information and disclosures as required under the Ordinance and those required by the Commission at the time of approval of prospectus.

(2) Where Sukuk are issued through private placement, the issuer shall prepare information memorandum containing all the material information as listed out in **Appendix-II**.

(3) Information memorandum shall be considered as a private document not to be used as a document inviting the general public or a class thereof for subscription of Sukuk and may be circulated only to Qualified Institutional Buyers.

10. Reporting Requirement.- (1) The Issue of Sukuk shall be reported by the issuer to the Commission within ten days of the close of the Issue along with all those documents and information as specified in **Appendix-III**.

(2) The Commission may also require the issuer to furnish such additional information relating to the Issue as the Commission deems appropriate.

CHAPTER IV

DISCIPLINARY PROCEEDINGS

11. Consequences of the contravention or breach of these Regulations.— Where any company or body corporate fails to comply with or contravenes any provisions of these

Regulations or is not in compliance with conditions for the Issue of Sukuk or any directive or order issued by the Commission, the Commission may after providing a reasonable opportunity of hearing impose a penalty provided under sub-section (2) of section 506A of the Ordinance and/or direct the issuer to,-

- (a) recall all or any of the Sukuk offered or issued;
- (b) take such corrective measures that are necessary to safeguard interest of the Sukuk holders; and
- (c) publish details of the corrective measure taken by the issuer pursuant to the directions of the Commission.

CHAPTER V

MISCELLANEOUS

12. Financial Reporting and Accounting Treatment.- The issuer of Sukuk shall, while preparing their financial reports, ensure that all the relevant standards, prescribed by the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) and notified by the Commission from time to time relating to the financial reporting and accounting treatment of Sukuk are complied with.

13. Relaxation. – (1) Where the Commission is satisfied that it is not practicable to comply with any requirement of these Regulations in a particular case or class of cases, the Commission may relax such requirement and may impose such conditions as it deem fit provided the risk management strategy arranged by the issuer fully safeguard interest of the Sukuk holders.

CONTENTS OF TERM SHEET

[Regulation 3]

The Term Sheet for the issue of Sukuk Certificates shall contain at least the following information/disclosures:

- (i) name of the issuer;
- (ii) issue date;
- (iii) size of the issue, including green shoe option, if any;
- (iv) mode of issue i.e public offer through prospectus, right offer through letter of rights to the existing shareholders or debenture holders of the issuing company, offer to Qualified Institutional Buyers through information memorandum under the regulation of the stock exchanges or offer through agreement to persons mentioned in Section 120 of the Ordinance and notified therein.
- (v) type of the Sukuk Certificates;
- (vi) purpose of the issue and utilization of the proceeds thereof;
- (vii) name of the stock exchange where the Sukuk Certificates are listed, in case of listed Sukuk Certificates;
- (viii) credit rating of the issuer for the last three years, if any, including latest credit rating of the entity and that of the Sukuk Certificates and name of the credit rating company;
- (ix) salient features of the Sukuk Certificates like its offer price, tenure, rate of return, secured/unsecured, listed, unlisted etc.;
- (x) in case of secured Sukuk Certificates, nature and amount of the security backing the instrument and nature of charge(s) established in favor of the Trustee to the issue;
- (xi) rates of various taxes, duties and zakat applicable on investment in Sukuk Certificates.

- (xii) options like put option, call option, if any;
- (xiii) address of the registered office of the issuer;
- (xiv) postal address, email address, telephone number & fax number of the compliance officer of the issuer;
- (xv) name and address of the registered office of the Trustee; and;
- (xvi) name and address of the registered office of the Consultants to the issue, if any.

CONTENTS OF INFORMATION MEMORANDUM

[Regulation 9(2)]

The Information Memorandum (IM) prepared with respect to issue of Sukuk shall contain at least the following information/disclosures:

- (i) On cover page the following should be disclosed:
 - (a) a disclaimer in bold letters stating that, **“This is not a prospectus for issue of securities to the general public but a document prepared for the purpose of offering Sukuk Certificates only to the Institutional Investors. This IM has not been approved by the Commission or any of the stock exchanges”**;
 - (b) a disclaimer in bold letters stating that, **“The Board of Directors of ... (Name of the Issuer) ... accepts responsibility for accuracy of the information contained in this document”**; and
 - (c) name of the Issuer, name of the entity preparing the IM and date of the IM.
- (ii) Table of contents, executive summary by the entity preparing the IM, purpose of preparation of the IM and their scope of work;
- (iii) Glossary of technical terms and acronyms, after the table of contents;
- (iv) Information about the Issuer like its name, date of its incorporation, registration number, addresses of its registered & head offices, date of its listing, if applicable, name of the stock exchange where it is listed, if applicable, its sponsors and major shareholders, associated companies/undertakings etc.;
- (v) Purpose of the issue and breakup of the utilization of the proceeds of the issue;
- (vi) Shariah principle used for structuring of the Sukuk;
- (vii) name of the Shariah Advisor and terms of his/its appointment;
- (viii) rights and obligations of the issuer, the investors and the trustee;

- (ix) Latest pattern of shareholding of the Issuer;
- (x) Names of the directors of the Issuer and their directorships in other companies;
- (xi) Profile of the management of the Issuer including all the members of the Board of Directors excluding the nominee directors, the Chief Financial Officer and the Company secretary;
- (xii) Organization structure of the Issuer and its principle business;
- (xiii) Future outlook/ business strategy of the Issuer;
- (xiv) Highlights of major restructuring, if any, like merger, demerger, amalgamation, acquisition, reorganization, financial restructuring etc.;
- (xv) Five years financial highlights relating to cash flows and financial & operating position of the Issuer including key financial ratios like debt/equity ratio (pre & post issue), current ratio, return on equity, return on assets, earning per share, debt service coverage ratio etc. in tabular form;
- (xvi) Salient features of the Issue and the instrument like issue size, tenure, mechanism for determination of return on investment made through the subscription of Sukuk Certificates, nature of the instrument whether it is secured or un-secured, redeemable or perpetual, convertible or non-convertible, options like put option, call option/early redemption option, partial call option etc.;
- (xvii) Redemption schedule;
- (xviii) Detail of the redemption reserve, if any;
- (xix) Terms & conditions for investment in Sukuk;
- (xx) In case the proceeds of the Issue are to be utilized for project financing, detail of such project like project cost & means of financing (i.e. Financial Plan), project implementation schedule, latest status of the implementation of the project, expected date of completion of the project, expected date of trial & commercial production etc.;
- (xxi) In case of issuance of Sukuks by a Special Purpose Vehicle, detail of the securitization transaction, parties to the transaction and role of each such party, etc.;
- (xxii) Five years financial projections (i.e Balance Sheet, Income Statement, cash flow statement and statement on changes in equity) including key financial ratios;
- (xxiii) Complete credit rating report of the entity and the instrument based on the Issuer's latest audited accounts and duly reviewed if it is older than six months. In

case where the instrument and entity rating is obtained from more than one credit rating agencies, all the ratings, including the unaccepted rating(s), shall be disclosed;

- (xxiv) Detail of security, if applicable, backing the instrument like nature of assets hypothecated, book value of such assets, nature of charge created in favour of the Trustee (i.e. exclusive, parri passu or ranking), nature and amount of the existing charge(s) on the assets, if any, names of the creditors who hold charge on these assets and status of NOC/consent of the existing creditors, creditor-wise and nature-wise break up of total existing debts etc.;
- (xxv) Name of the Trustee, date of execution of the Trust Deed, authority of the Trustee under the Trust Deed, security enforcement mechanism by the Trustee in case of default by the Issuer;
- (xxvi) All the risk factors associated with the investment in the Sukuk and their mitigants;
- (xxvii) Basic information about the industry the Issuer belongs to, key players in the industry, basic raw material used by the Issuer, if any, and list of suppliers thereof, main clients of the Issuer, competitors of the Issuer, etc.;
- (xxviii) Summary of all the material contracts relating to the Issue and the project, if any;
- (xxix) Issuer's behavior towards servicing of existing debts i.e. the profit and principal amount on existing term loans and debt securities issued by it is paid on time;
- (xxx) the information as required under section 120 of the Ordinance;
- (xxxi) any other information the issuer or the offerer, as the case may be, thinks necessary to be disclosed; and
- (xxxii) Any other material information/ fact which may affect the investor's decision of investment in the Sukuk.

DOCUMENTS/INFORMATION TO BE SUBMITTED TO THE COMMISSION

[Regulation 10 (1)]

1. IN CASE OF PUBLIC OFFER OF SUKUK:

In case of issuance of Sukuk Certificates to the general public, the issuer shall submit along with application for approval of prospectus, the following document/information:

- (i) all those documents as required for issuance of any other debt instrument to the general public; and
- (ii) the documents and information as mentioned in para 2 below.

2. IN CASE OF ISSUE OF SUKUK THROUGH PRIVATE PLACEMENT:

In case of issuance of Sukuk Certificates through private placement, the issuer, shall, within ten days of the closing of the subscription period, submit to the Commission the following documents/information:

- (i) Undertaking on non-judicial stamp paper by the issuer on the format as given in **Appendix-IV**.
- (ii) Certificate from the Shariah Advisor stating that the structure of the Sukuk is according to the Shariah principles.
- (iii) Complete description of the transaction and structure of the issue;
- (iv) Detailed Term Sheet of the issue on the format as given in **Appendix-I**.
- (v) Copy of the Trust Deed executed between the issuer and the Trustee.
- (vi) Latest pattern of shareholding of the issuer.
- (v) Copy of the credit rating report containing credit rating of both the entity and the instrument from credit rating agency registered with the Commission.

**FORMAT OF UNDERTAKING UNDER PARA (2) OF APPENDIX-III ON NON-
JUDICIAL STAMP PAPER OF THE REQUIRED VALUE**

The Securities and Exchange Commission of Pakistan,
63, NIC Building, Jinnah Avenue,
Islamabad.

UNDERTAKING

I, on behalf of ... (Name of the issuing company)... (the Company) duly authorized by its Board of Directors hereby undertake that:

- (i) the Issuer shall forward to the Trustee promptly, whether a request for the same has been made or not the following information/documents:
 - (a) copy of the latest audited annual accounts and half yearly accounts as and when finalized along with key financial ratios. The ratios should include debt/equity ratio, current ratio, return on equity, return on assets, earning per share, debt service coverage ratio etc.
 - (b) copy of the notice, resolution and circular relating to new issue of Sukuk or any other debt instrument at the same time as it is sent to the Commission, the Exchange, the shareholders or the Sukuk holders;
 - (c) copy of the notice, letter, circular, etc. issued to the Sukuk holders or published in the print media relating to the issue of Sukuk;
 - (d) certificate from the auditors of the Company on maintenance of 100% security cover in respect of secured Sukuk on semi-annual basis within one month of the closing of

- each half year;
 - (e) copy of the credit rating report;
 - (f) redemption status of the Sukuk on semi-annual basis till it is fully redeemed;
 - (g) status of redemption reserve, if any; and
 - (h) any other information/document as required by the Trustee.
- (ii) the Issuer shall provide access to the Trustee to the books of accounts and record relating to the Sukuk.
- (iii) the Issuer shall forward to the Commission and in case of listed Sukuk to the stock exchange concerned, promptly, the following documents/information:
- (a) certificate from the auditors of the Company on maintenance of 100% security cover in respect of secured Sukuk on semi-annual basis within one month of the closing of each half year;
 - (b) copy of the credit rating report;
 - (c) redemption status of the Sukuk on semi-annual basis till it is fully redeemed;
- (d) status of redemption reserve, if any;
- (e) copy of the latest audited annual accounts and half yearly accounts as and when finalized along with key financial ratios. The ratios should include debt/equity ratio, current ratio, return on equity, return on assets, earning per share, debt service coverage ratio etc.
 - (f) copy of the notice, resolution and circular relating to new issue of Sukuk at the same time as it is sent to the shareholders or Sukuk holders; and

- (g) copy of the notice, letter, circular, etc. issued to the Sukuk holders or published in the print media relating to the issue of Sukuk.
- (iv) The Issuer shall promptly notify to the Commission and in case of listed Sukuk to the stock exchange concerned:
- (a) prohibitory order, if any, restraining the Issuer from transferring Sukuk from the name of any Sukuk holder and furnish to the stock exchange concerned, number of Sukuk Certificates held in the name of the person so affected, his name and number of his CDC account in which the Sukuk are held;
 - (b) any action which will result in the redemption, conversion, cancellation, retirement in whole or in part of any Sukuk;
 - (c) any action that would adversely affect payment of principal amount and profit on investment in Sukuk;
 - (d) any change in the form or nature of any of its debt securities issued or in the rights and privileges of the holders thereof;
 - (e) any other change that would affect the rights and obligations of the Sukuk holders;
 - (f) any other information not in the public domain and is necessary to be known to the Sukuk holders to enable them to clarify their position and to avoid the creation of a false market in such Sukuk;
 - (g) any changes in the General Character or nature of business / activities, disruption of operation due to natural calamity, revision in ratings and commencement of commercial production / commercial operations;
 - (h) any event such as strike and lock out, which has a bearing on the profit payment/ principal repayment capacity of the Issuer;

- (i) detail of any letter or comments made by the Trustee regarding payment/non-payment of profit on due dates, payment/nonpayment of principal amount on the due dates or any other matter concerning the Sukuk, the Issuer and the assets backing the Sukuk along with its comments thereon, if any;
 - (j) delay/ default in payment of profit and principal amount for a period of more than fifteen days from the due date; and
 - (k) any other information having bearing on the operation/performance of the Issuer as well as price sensitive information.
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- (v) the Issuer shall maintain 100% security cover, in case of secured Sukuk, at all times till complete redemption of such Sukuk.
 - (vi) the Issuer shall continuously rate the entity and instrument from a credit rating agency registered with the Commission.
 - (vii) the Issuer shall notify the Commission and in case of listed Sukuk, the stock exchange concerned, the expected default in timely payment of profit or principle amount as soon as the same becomes apparent.
 - (viii) **the Issuer shall induct the Sukuk at Central Depository System of a Depository Company.**
 - (ix) the Issuer shall not forfeit unclaimed profit. The unclaimed profit, if any, shall be kept under a separate head of account namely, “Unclaimed Profit on Sukuk Certificates”.
 - (x) the Issuer shall not redeem the Sukuk by any manner otherwise than that as disclosed in the prospectus or the information memorandum or the trust deed or any other contract, as the case may be, without prior written approval of Commission in case of Sukuk issued to the general public; the stock exchange concerned, in case of listed Sukuk; the Trustee and

the Sukuk holders, in any other case.

- (xi) The Issuer, upon request, shall send copy of its annual audited accounts and half yearly accounts to the Sukuk holders.
- (xii) The Issuer shall not make any material modification in the structure of the Sukuk, profit payment, conversion, redemption etc. without prior written approval of the Commission, in case of Sukuk issued to the general public; the stock exchange concerned, in case of listed Sukuk; the Trustee and the Sukuk holders, in any other case and without full compliance with the relevant provision of the Ordinance and the trust deed.
- (xiii) The Issuer shall designate the Company Secretary or Chief Financial Officer or any other person having the minimum qualification prescribed for the position of the Company Secretary as Compliance Officer who:
 - (a) shall be responsible for ensuring compliance with the regulatory provisions applicable to the issue of Sukuk Certificates and report the same at the meeting of the Board of Directors of the Issuer held subsequently;
 - (b) shall directly report to the Commission and the Trustee in case of all issues of Sukuk and to the stock exchange concerned in case of listed Sukuk implementation of various clauses of these Regulations and other directives of the Commission, if any.
- (xv) The Issuer shall comply with all the laws applicable to the issue of Sukuk.

Dated: _____

Name and signature of the Chief Executive
Officer of the Issuer duly authorized by its
Board of Director

Name and signature of the Company Secretary
or Chief Financial Officer of the Issuer duly
authorized by its Board of Director

Place: _____

Common Seal of the Issuer

F. No. SMD/CIW/Misc./07/2009

(Bushra Aslam)
Secretary to the Commission